

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CARLTON M. SIMS,

Plaintiff,

v.

CORRECTIONAL OFFICER  
PALACIOS,

Defendant.

Case No. 2:23-cv-01310-VBF-PD

ORDER DISMISSING ACTION  
FOR FAILURE TO PROSECUTE

I. Pertinent Procedural History and Plaintiff's Claims

On August 7, 2023, Plaintiff Carlton M. Sims ("Plaintiff"), who is proceeding pro se, filed a First Amended Complaint under 42 U.S.C. § 1983 against Defendant Correctional Officer Palacios ("Palacios"). [Dkt. No. 11.] Plaintiff alleges that Palacios opened his legal mail in violation of his constitutional right to be present and committed "mail fraud." [Id. at 3, 5.] He seeks \$20,000 in monetary damages. [Id. at 6.]

On January 9, 2024, the Court issued a screening order dismissing the First Amended Complaint for failure to state a claim under the First Amendment and directed Plaintiff to file a Second Amended Complaint curing the defects identified by the Court no later than February 6, 2024. [Dkt. No.

1 12.] The Court’s Order was mailed to the address listed on the First Amended  
2 Complaint, which was the California State Prison – Los Angeles County, in  
3 Lancaster, California. [Id.]

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5 On February 12, 2024, the Court’s order was returned from California  
6 State Prison-Los Angeles County with a notation “RETURN TO SENDER--  
7 inmate out to court.” [Dkt. No. 13.]

8 On February 16, 2024, the Court issued an Order to Show Cause  
9 (“OSC”) re: Plaintiff’s current address and failure to file a Second Amended  
10 Complaint. [Dkt. No. 14.] According to the California Incarcerated Records &  
11 Information Search (“CIRIS”), Plaintiff was in the custody of the CDCR at  
12 Salinas Valley State Prison, 31625 Highway 101, Soledad, CA, 93960. See  
13 <https://cdcr.ca.gov/search>. The Court ordered Plaintiff to provide a current  
14 address and a Second Amended Complaint curing the deficiencies outlined in  
15 Docket Number 12 to the Court no later than March 13, 2024. [Id.] Plaintiff  
16 was cautioned that if he failed to respond to the OSC, the Court would  
17 recommend dismissal of this action for failure to prosecute. [See id.] The OSC  
18 was mailed to the address listed on the docket and to Salinas Valley State  
19 Prison. [Id.]

20 On March 12, 2024, the Court’s OSC was returned from California State  
21 Prison-Los Angeles County and Salinas Valley State Prison with notations  
22 “RETURN TO SENDER--inmate out to court.” [Dkt. Nos. 15-20<sup>1</sup>.]

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24 To date, Plaintiff has not responded to the Court’s orders, provided an  
25 updated address, or otherwise communicated with the Court about his case  
26 since August 2023. Accordingly, the case is now subject to dismissal for

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28 <sup>1</sup> The return envelope for the OSC sent to California State Prison-Los Angeles  
County also listed an address for a parole agent, Travis Brehm, in Sacramento,  
California. [See Dkt. No. 20.] However, CIRIS still lists Plaintiff’s address at SVSP.

1 Plaintiff's failure to prosecute pursuant to Rule 41(b) of the Federal Rules of  
2 Civil Procedure and Local Rule 41-6.

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4 II. Discussion

5 Rule 41(b) grants district courts the authority to sua sponte dismiss  
6 actions for failure to prosecute. *Link v. Wabash R.R. Co.*, 370 U.S. 626, 629-30  
7 (1962). In determining whether dismissal for lack of prosecution is warranted,  
8 a court must weigh several factors, including: (1) the public's interest in  
9 expeditious resolution of litigation; (2) the court's need to manage its docket;  
10 (3) the risk of prejudice to defendants; (4) the availability of less drastic  
11 sanctions; and (5) the public policy favoring the disposition of cases on their  
12 merits. *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002); *Ferdik v.*  
13 *Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992). Dismissal is appropriate  
14 under the foregoing analysis "where at least four factors support dismissal ...  
15 or where at least three factors 'strongly' support dismissal." *Hernandez v.*  
16 *City of El Monte*, 138 F.3d 393, 399 (9th Cir. 1998) (citations omitted).

17 In this case, the first two factors – public interest in expeditious  
18 resolution of litigation and the need to manage the Court's docket – weigh in  
19 favor of dismissal. Plaintiff did not file a Second Amended Complaint or  
20 provide an updated address. His failure to file an amended complaint or  
21 update his address—or show good cause for his delay—prevents the Court  
22 from moving this case toward disposition and shows that Plaintiff does not  
23 intend to litigate this action diligently.

24 Arguably, the third factor – prejudice to Defendant – does not counsel in  
25 favor of dismissal because no viable pleading exists, and thus Defendant is  
26 unaware that a case has been filed. However, the Ninth Circuit has held that  
27 prejudice may be presumed from unreasonable delay. See *In re Eisen*, 31 F.3d  
28 1447, 1452-53 (9th Cir. 1994); *Moore v. Teflon Commc'ns. Corp.*, 589 F.2d 959,

1 967-68 (9th Cir. 1978). Plaintiff's inaction in this matter is an unreasonable  
2 delay, given that the Court has attempted to mail several orders to Plaintiff  
3 and has received no communication. In the absence of any explanation, non-  
4 frivolous or otherwise, for Plaintiff's delay, the Court presumes prejudice. See  
5 *Laurino v. Syringa Gen. Hosp.*, 279 F.3d 750, 753 (9th Cir. 2002) (presumption  
6 of prejudice can be rebutted by a non-frivolous explanation); *Pagtalunan*, 291  
7 F.3d at 642 (citing *Yourish v. California Amplifier*, 191 F.3d 983, 991 (9th Cir.  
8 1999)).

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10 The fourth factor – the availability of less drastic sanctions – ordinarily  
11 counsels against dismissal. However, the Court attempted to avoid outright  
12 dismissal by giving Plaintiff ample time to communicate with the Court,  
13 update his address, and file an amended complaint. Plaintiff was also  
14 expressly warned that failure to comply with the Court's orders could result in  
15 dismissal. [See Dkt. Nos. 12, 14.] Thus, the Court explored the only  
16 meaningful alternatives to dismissal in its arsenal and found that they were  
17 not effective. See *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986)  
18 (“The district court need not exhaust every sanction short of dismissal before  
19 finally dismissing a case, but must explore possible and meaningful  
20 alternatives.”) (citation omitted).

21 The fifth factor – the general policy favoring resolution on the merits –  
22 ordinarily weighs against dismissal. *Pagtalunan*, 291 F.3d at 643. It is,  
23 however, the responsibility of the moving party to move the case toward  
24 disposition on the merits at a reasonable pace and to refrain from dilatory and  
25 evasive tactics. *Morris v. Morgan Stanley & Co.*, 942 F.2d 648, 652 (9th Cir.  
26 1991). Because Plaintiff has failed to participate in his own lawsuit, it does  
27 not appear that retention of this case would increase the likelihood of the  
28 matter being resolved on its merits. This factor does not weigh in favor of or  
against dismissal.

1 In sum, four out of the five factors support dismissal. The Court  
2 concludes that dismissal for failure to prosecute is warranted.

3 For the foregoing reasons, this action is dismissed for failure to  
4 prosecute.

5 IT IS SO ORDERED.

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7 Dated: August 28, 2024 /s/ Valerie Baker Fairbank

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10 HON. VALERIE B. FAIRBANK  
11 UNITED STATES DISTRICT JUDGE  
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